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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CEMCO, LLC,

11 Plaintiff,

12 v.

13 KPSI INNOVATIONS, INC., et al.,

14 Defendants.

CASE NO. C23-0918JLR

ORDER

15 Before the court is Defendants KPSI Innovations, Inc. (“KPSI”), James Klein,
16 Serina Klein, and Kevin Klein’s (collectively, “Defendants”) motion to dismiss Plaintiff
17 CEMCO, LLC’s (“CEMCO”) second amended complaint. (Mot. (Dkt. # 54); Reply
18 (Dkt. # 61); *see also* 2d Am. Compl. (Dkt. # 52).) In its prior order on Defendants’
19 motion, the court reserved ruling in part, ordered CEMCO to file supplemental briefing
20 on the sufficiency of its patent infringement allegations, and provided Defendants the
21 opportunity to file a supplemental response addressing the same. (1/29/24 Order (Dkt.
22 # 62) at 14; *see also* Pl. Supp. Br. (Dkt. # 63); Def. Supp. Br. (Dkt. # 65).) CEMCO does

1 not defend its infringement allegations in its supplemental brief; instead, CEMCO
2 requests leave to file a third amended complaint. (Pl. Supp. Br. at 2.) CEMCO's
3 proposed third amended complaint abandons its claims for direct patent infringement and
4 adds new facts supporting its claims for induced patent infringement. (*Id. See generally*
5 2/9/24 Trojan Decl. (Dkt. # 64) ¶ 3, Ex. B ("3d Am. Compl."); *id.* ¶ 2, Ex. A (redline).)

6 Because CEMCO opted not to defend the patent infringement allegations as
7 pleaded in its second amended complaint, the court GRANTS Defendants' motion to
8 dismiss those claims. Defendants ask that dismissal be with prejudice because CEMCO
9 has abandoned its direct infringement allegations and because granting leave to amend its
10 induced infringement allegations would be "futile." (Def. Supp. Br. at 3.) The court
11 agrees with Defendants regarding CEMCO's direct infringement¹ allegations; those
12 claims are hereby dismissed with prejudice. The court does not agree, however, that
13 amendment of CEMCO's induced infringement allegations would be futile. Moreover,
14 the interests of justice favor granting CEMCO leave to file its third amended complaint.
15 *See* Fed. R. Civ. P. 15(a)(2). Accordingly, the court GRANTS CEMCO leave to file its
16 third amended complaint.

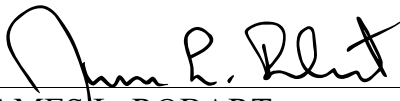
17 CEMCO shall file its proposed third amended complaint by no later than Friday,
18 February 23, 2024. Defendants may move to dismiss CEMCO's claims for induced
19 patent infringement on an expedited briefing schedule. Should Defendants move to
20 //

21 ¹ Defendants request that the court dismiss CEMCO's claims for direct and contributory
22 patent infringement (Def. Supp. Br. at 2), but CEMCO's second amended complaint does not
bring a claim for contributory infringement (*see generally* 2d Am. Compl.).

1 dismiss, they must file a motion not exceeding 2,000 words by no later than March 4,
2 2024. The motion shall be noted for consideration on March 13, 2024. CEMCO's
3 response, which may not exceed 2,000 words, is due by no later than March 8, 2024.
4 And Defendants may file an optional reply brief not exceeding 1,000 words by no later
5 than March 13, 2024.

6 In sum, the court GRANTS in part Defendants' motion to dismiss (Dkt. # 54).
7 CEMCO's claims for direct patent infringement are hereby DISMISSED with prejudice.
8 The court GRANTS CEMCO leave to file its proposed third amended complaint. Should
9 Defendants move to dismiss the induced infringement claims in CEMCO's third
10 amended complaint, they must do so in accordance with the briefing schedule outlined in
11 this order.

12 Dated this 21st day of February, 2024.

13 
14 JAMES L. ROBERT
United States District Judge